

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Dale Allen Severance,

Petitioner,

v.

Brian D. Kaiser, et al.,

Respondents.

No. CV-15-01194-PHX-NVW (ESW)

ORDER

Pending before the court is the Report and Recommendation (“R&R”) of Magistrate Judge Eileen S. Willett (Doc. 21) issued February 9, 2016, regarding petitioner’s Amended Petition for Writ of Habeas Corpus filed pursuant to 28 U.S.C. § 2254 (Doc. 10) and Respondents’ Motion to Dismiss Habeas Petition for Failure to Exhaust Any Claim (Doc. 18). The Court ordered that a response to the Motion to Dismiss shall be filed no later than February 1, 2016 (Doc. 19). No response was filed.

The R&R recommends that the Amended Petition be dismissed without prejudice. The Magistrate Judge advised the parties that they had fourteen days to file objections to the R&R. (R&R at 4 citing Rule 72(b), Fed. R. Civ. P.). No objections were filed.

Because the parties did not file objections, the court need not review any of the Magistrate Judge’s determinations on dispositive matters. See 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003); *Thomas v. Arn*, 474 U.S. 140, 149 (1985) (“[Section 636(b)(1)] does not . . . require any review at all . . . of any issue that is not the subject of an objection.”). The absence of a timely objection also means that error may not be assigned on appeal to any defect in the

1 rulings of the Magistrate Judge on any non-dispositive matters. Fed. R. Civ. P. 72(a) (“A
2 party may serve and file objections to the order within 14 days after being served with a
3 copy [of the magistrate’s order]. A party may not assign as error a defect in the order not
4 timely objected to.”); *Simpson v. Lear Astronics Corp.*, 77 F.3d 1170, 1174 (9th Cir.
5 1996); *Phillips v. GMC*, 289 F.3d 1117, 1120-21 (9th Cir. 2002).

6 Notwithstanding the absence of an objection, the court has reviewed the R&R and
7 finds that it is well taken. The court will accept the R&R and dismiss the Amended
8 Petition. *See* 28 U.S.C. § 636(b)(1) (stating that the district court “may accept, reject, or
9 modify, in whole or in part, the findings or recommendations made by the magistrate”).

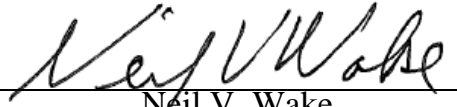
10 IT IS THEREFORE ORDERED that Report and Recommendation of the
11 Magistrate Judge (Doc. 21) is accepted.

12 IT IS FURTHER ORDERED granting Respondent’s Motion to Dismiss (Doc. 18).

13 IT IS FURTHER ORDERED dismissing petitioner’s Amended Petition for Writ
14 of Habeas Corpus filed pursuant to 28 U.S.C. § 2254 (Doc. 10) without prejudice. The
15 Clerk shall terminate this action.

16 Having considered the issuance of a Certificate of Appealability, the Court
17 FINDS: Certificate of Appealability and leave to proceed in forma pauperis on appeal
18 are **denied** because dismissal of the petition is justified by a plain procedural bar and
19 jurists of reason would not find the procedural ruling debatable.

20 Dated this 9th day of March, 2016.

21
22
23 
24 Neil V. Wake
25 United States District Judge
26
27
28